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   Laguna Beach, CA 92651

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4 *Attorneys for Plaintiff*

5 *Crittenden Research, Inc.*

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2009 FEB 25 PM 4: 15

CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY_____DEPUTY

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8   IN THE UNITED STATES DISTRICT COURT
9   FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CRITTENDEN RESEARCH, INC.,
3990 Old Town Avenue, Suite 300
San Diego, CA 92110
 	
         Plaintiff,
  vs.
 	
BURNS & WILCOX, LTD.
30833 Northwestern Highway
Farmington Hills, MI 48334
 	
         Defendant.
	'09 CV 0378 IEG NLS
	
	Case No. _____
	
	COMPLAINT FOR INJUNCTIVE AND DECLARTORY RELIEF AND FOR DAMAGES
	
	JURY TRIAL DEMANDED

19   Plaintiff Crittenden Research, Inc. ("Crittenden"), by its attorneys, brings this action against

20 Burns & Wilcox, Ltd. ("Burns & Wilcox"), and for its causes of action states as follows:

21   **INTRODUCTION**

22   1. By this Complaint, Crittenden seeks statutory damages, actual damages, injunctive

23 relief, and its attorneys' fees and costs pursuant to the Copyright Act, 17 U.S.C. § 501 et seq.

24 together with direct and consequential damages for breach of contract. Burns & Wilcox has

25 systematically, regularly and repeatedly, and without authorization, reproduced multiple complete

26 issues of a newsletter published by Crittenden and in which Crittenden owns the copyright.

27   2. Burns & Wilcox's regular, unauthorized reproduction of multiple issues of the

28 newsletter constitutes willful violation of the Copyright Act and breach of contract.

                                          1
COMPLAINT FOR INJUNCTIVE AND DECLARATORY
RELIEF AND FOR DAMAGES

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.
1041 Skyline Drive
Laguna Beach, CA 92651
Telephone: (949) 715-3136

JURISDICTION

3. This is an action for actual and statutory damages pursuant to the Copyright Act, 17 U.S.C. §§ 101, et seq, and for breach of contract. This Court has subject matter jurisdiction over this action pursuant to, inter alia, 28 U.S.C. §§ 1331, 1332 and 1338(a).

4. Upon information and belief, this Court has personal jurisdiction over Burns & Wilcox because, among other reasons, Burns & Wilcox purposefully directs activities towards California; regularly conducts and solicits business in California, including business which its infringement of Crittenden's copyrights is intended to facilitate; derives substantial revenues from goods and/or services provided in California; and purchased publications, including that which is the subject of this action, from a corporation in California.

5. Venue is proper in this Court pursuant to, inter alia, 28 U.S.C. § 1400(a).

PARTIES

6. Plaintiff Crittenden is a corporation organized under the laws of California, with its principal place of business in San Diego, California.

7. Upon information and belief, defendant Burns & Wilcox is a corporation organized under the laws of Michigan, with its principal place of business in Farmington Hills, Michigan. Upon information and belief, Burns & Wilcox operates thirty-eight offices in twenty-four States, including six offices in California and one in San Diego.

FACTUAL BACKGROUND

8. Crittenden owns, publishes and is the copyright holder in the publication *Specialty Coverages Insider* (the "Publication"). Individual subscriptions to the Publication sell for $1,767 annually. Subscriptions for corporations with higher usage patterns, including without limitation where the Publication is used by or for the benefit of numerous employees, are sold for significantly higher prices.

9. The Publication constitutes original material authored by Crittenden pursuant to the Copyright Act. Crittenden has complied with the copyright law and is the owner of the exclusive copyrights therein, including the rights infringed by Burns & Wilcox.

2

COMPLAINT FOR INJUNCTIVE AND DECLARATORY
RELIEF AND FOR DAMAGES

10. The Register of Copyrights has issued Certificates of Registration Numbers TX 6-546-238, TX 6-567-015, TX 6-612-719, TX 6-633-432, and TX 6-643-549 to Crittenden for the Publication.

11. Since no later than 2005, Burns & Wilcox has subscribed to the Publication. Initially, Burns & Wilcox purchased a group subscription permitting up to twenty-eight (28) copies of the Publication to be provided to its employees. Beginning in 2007, however, Burns & Wilcox terminated its group subscription agreement for the Publication and entered into a single-user subscription agreement.

12. The single user subscription agreement that Burns & Wilcox entered into in 2007 permits only one specifically designated employee to receive the Publication. The agreement expressly prohibits "[r]egular or full-issue reproduction, forwarding to unauthorized individuals (including without limitation, persons within the subscriber's or end user's company)".

13. In addition, each issue of the Publication contains prominent copyright notices and warnings against unauthorized reproduction or access, including, for example, that it "is illegal to forward or otherwise distribute" the Publication without permission. Furthermore, the e-mails transmitting each issue of the Publication to subscribers warn that "You may not make copies from your electronic version of this newsletter, even for internal use within your own company."

14. Despite the terms of the single-user subscription agreement with Crittenden, Burns & Wilcox engaged in a pattern of making multiple copies of complete issues of the Publication, for distribution to its employees.

<div align="center">

COUNT ONE:

<u>COPYRIGHT INFRINGEMENT</u>

</div>

15. Crittenden hereby repeats and realleges the allegations contained in paragraphs 1 through 14 of this Complaint with the same force and effect as if fully set forth herein.

16. Notwithstanding the provision in the Copyright Act that the reproduction, display, and distribution of copyrighted works may lawfully be made only by the copyright owner or with its authorization, Burns & Wilcox has willfully and without Crittenden's permission infringed

COMPLAINT FOR INJUNCTIVE AND DECLARATORY
RELIEF AND FOR DAMAGES

Crittenden's copyrights by engaging in the systematic, regular, and repeated reproduction, display and distribution of multiple complete copies of issues of the Publication.

17. In light of the foregoing, Crittenden is entitled to the remedies provided for in 17 U.S.C. §§ 502, 504-505.

COUNT TWO:

BREACH OF CONTRACT

18. Crittenden repeats and realleges the allegations contained in paragraphs 1 through 17 of this Complaint with the same force and effect as if set forth fully herein.

19. Crittenden and Burns & Wilcox entered into a valid and enforceable agreement, under which Crittenden provided to Burns & Wilcox a single-user subscription to the Publication. Pursuant to the agreement, Burns & Wilcox was prohibited from making reproductions of complete issues of the Publication and was prohibited from forwarding the Publication to unauthorized individuals.

20. Burns & Wilcox breached its agreement with Crittenden by regularly making unauthorized reproductions of complete issues of the Publication and by forwarding the Publication to unauthorized individuals, including non-subscribing employees of Burns & Wilcox.

21. As a direct result of Burns & Wilcox's breach of its agreement with Crittenden, Crittenden has suffered, and continues to suffer, direct and consequential damages.

WHEREFORE, Crittenden demands judgment in its favor and against Burns & Wilcox, as follows:

(1) that Burns & Wilcox and its employees and agents be permanently enjoined from, directly or indirectly, infringing in any manner any of Crittenden's copyrighted material in violation of the Copyright Act, 17 U.S.C. § 501 et seq.;

(2) that Burns & Wilcox be required to pay Crittenden statutory damages incurred as the result of Burns & Wilcox's infringement of Crittenden's copyrights;

(3) that Burns & Wilcox be required to pay Crittenden enhanced statutory damages as a result of Burns & Wilcox's willful infringement of Crittenden's copyrights;

4

COMPLAINT FOR INJUNCTIVE AND DECLARATORY
RELIEF AND FOR DAMAGES

(4)   that, in the alternative, Burns & Wilcox be required to pay Crittenden actual damages and profits derived from Burns & Wilcox's infringing use of the Publications as a result of Burns & Wilcox's infringement of Crittenden's copyrights;

(5)   that Burns & Wilcox be required to pay Crittenden its direct and consequential damages incurred as the result of Burns & Wilcox's breach of its agreement with Crittenden;

(6)   that Burns & Wilcox be required to pay Crittenden its attorneys' fees and other costs of this action; and

(7)   for such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues so triable in this action.

DATED: February 24, 2009   Respectfully submitted,

                                             LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

                                             By: _____
                                                 JAMES E. GROSSBERG

                                             Attorneys for Plaintiff
                                             CRITTENDEN RESEARCH, INC.

Of Counsel:

Seth D. Berlin
Thomas Curley
LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.
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COMPLAINT FOR INJUNCTIVE AND DECLARATORY
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JS 44   (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet.   (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Crittenden Research, Inc.

DEFENDANTS
Burns & Wilcox, Ltd.

(b) County of Residence of First Listed Plaintiff   San Diego, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant   Oakland County, MI
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

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(c) Attorney's (Firm Name, Address, and Telephone Number)
James E. Grossberg, Levine Sullivan Koch & Schulz, LLP, 1041 Skyline Drive, Laguna Beach, CA, 92651 Tel: 949-715-3136

Attorneys (If Known)
Lawrence C. Atorthy, Kaufman, Payton & Chapa, 30833 Northwestern Highway, Farmington Hills, MI, 48334

II. BASIS OF JURISDICTION   (Place an "X" in One Box Only)

- ☐ 1   U.S. Government Plaintiff
- ☒ 3   Federal Question (U.S. Government Not a Party)
- ☐ 2   U.S. Government Defendant
- ☐ 4   Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff
(For Diversity Cases Only)   and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT   (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	**PERSONAL INJURY** / **PERSONAL INJURY**	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 310 Airplane / ☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881		☐ 430 Banks and Banking
☐ 140 Negotiable Instrument	☐ 365 Personal Injury - Product Liability	☐ 630 Liquor Laws	**PROPERTY RIGHTS**	☐ 450 Commerce
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 320 Assault, Libel & Slander / ☐ 368 Asbestos Personal Injury Product Liability	☐ 640 R.R. & Truck	☒ 820 Copyrights	☐ 460 Deportation
☐ 151 Medicare Act	☐ 330 Federal Employers' Liability	☐ 650 Airline Regs.	☐ 830 Patent	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 340 Marine / **PERSONAL PROPERTY**	☐ 660 Occupational Safety/Health	☐ 840 Trademark	☐ 480 Consumer Credit
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 345 Marine Product Liability / ☐ 370 Other Fraud	☐ 690 Other		☐ 490 Cable/Sat TV
☐ 160 Stockholders' Suits	☐ 350 Motor Vehicle / ☐ 371 Truth in Lending	**LABOR**	**SOCIAL SECURITY**	☐ 810 Selective Service
☐ 190 Other Contract	☐ 355 Motor Vehicle Product Liability / ☐ 380 Other Personal Property Damage	☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability	☐ 360 Other Personal Injury / ☐ 385 Property Damage Product Liability	☐ 720 Labor/Mgmt. Relations	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC 3410
☐ 196 Franchise		☐ 730 Labor/Mgmt.Reporting & Disclosure Act	☐ 863 DIWC/DIWW (405(g))	☐ 890 Other Statutory Actions
REAL PROPERTY	**CIVIL RIGHTS** / **PRISONER PETITIONS**	☐ 740 Railway Labor Act	☐ 864 SSID Title XVI	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 441 Voting / ☐ 510 Motions to Vacate Sentence	☐ 790 Other Labor Litigation	☐ 865 RSI (405(g))	☐ 892 Economic Stabilization Act
☐ 220 Foreclosure	☐ 442 Employment	☐ 791 Empl. Ret. Inc. Security Act	**FEDERAL TAX SUITS**	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 443 Housing/ Accommodations / **Habeas Corpus:**		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 894 Energy Allocation Act
☐ 240 Torts to Land	☐ 444 Welfare / ☐ 530 General		☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment / ☐ 535 Death Penalty	**IMMIGRATION**		☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other / ☐ 540 Mandamus & Other	☐ 462 Naturalization Application		
	☐ 550 Civil Rights	☐ 463 Habeas Corpus - Alien Detainee		☐ 950 Constitutionality of State Statutes
	☐ 440 Other Civil Rights / ☐ 555 Prison Condition	☐ 465 Other Immigration Actions		

V. ORIGIN   (Place an "X" in One Box Only)

- ☒ 1   Original Proceeding
- ☐ 2   Removed from State Court
- ☐ 3   Remanded from Appellate Court
- ☐ 4   Reinstated or Reopened
- ☐ 5   Transferred from another district (specify)
- ☐ 6   Multidistrict Litigation
- ☐ 7   Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Copyright Act, 17 U.S.C. Sect. 501 et seq.

Brief description of cause:
This is an action for copyright infringement.

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ Unspecified damages

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes   ☐ No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE _____   DOCKET NUMBER _____

DATE
02/24/2009

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

160475   — TC

February 25, 2009
16:22:04

Civ Fil Non-Pris
USAO #.: 09CV0378
Judge..: IRMA E GONZALEZ
Amount.: $350.00 CK
Check#.: 25918

Total-> $350.00

FROM: CRITTENDEN VS BURNS